

CERTIFICATE OF EXPRESS MAILING UNDER 37 CFR 1.10

Serial No.: 10/603759

Filing Date: 06/25/2003

Applicant(s): Jerg, Helmut; Rosenbauer, Michael; Schessi, Bernd, Suck
Ernst

Title: WASHING CONTAINER FOR A DISH-WASHING
MACHINE

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March 17, 2006

Date of Deposit

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Signature

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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Jerg, Helmut; Rosenbauer, Michael; Schessl, Bernd; Stickel,
Ernst

Application Number: 10/603759

Filing Date: 06/25/2003

Title: WASHING CONTAINER FOR A DISH-WASHING MACHINE

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OFFICE OF PETITIONS

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: FRANCES HICKS

**PETITION UNDER 37CFR §1.183 FOR THE DIRECTOR
TO SUSPEND OR WAIVE THE REGULATIONS REGARDING PROPER CLAIMING
OF PRIORITY OR IN THE ALTERNATIVE TO GRANT AND CHARGE A SINGLE
FEE REQUIRED FOR SUCH GRANT OF PRIORITY**

Sir:

This is a Petition under 37 CFR §1.183 for the Director to suspend the requirements of 37 CFR §1.78 as it relates to the surcharge under 37 CFR §1.17(t) to perfect Applicant's claim for priority.

As discussed with Ms. Hicks, this petition is being filed herein and in each of the accompanying fifty applications listed on the attached Appendix (The Appendix is identical in each application, so there are actually fifty-one listed applications, including in each case the application in which the petition is filed). As explained to Ms. Hicks, each of the fifty-one applications was filed with the same error in claiming the priority. Applicants believe that this was a single error by the undersigned in the filing and Applicants should not be penalized over \$72,000 (\$1,370 fee) or over \$20,000 (\$400 fee) for the same error just repeated fifty-one times by the undersigned operating essentially as a sole practitioner for the filing of the fifty-one

applications. The situation is the same in each application as explained in detail below with respect to this application.

More specifically, this application was filed as the national phase of an international application designating the United States. The assignee originally filed the application in Germany and then, through the PCT, filed this application through the US office here in North Carolina by the undersigned. An Application Data Sheet was originally submitted with the application claiming priority to both the originally filed German application upon which the International Application was based, and to the PCT International Application. The Application Data Sheet specifically identified the International Application. Further, the Transmittal Letter to the United States Designated/Elected office under 37 CFR §371 also specifically designated the international application number and claimed priority to the filing date of the International Application, which in turn claimed priority properly to the originally filed German application.

The only error in the original submission was that the International Application was indicated to be a foreign priority claim, as opposed to a domestic priority claim.

Applicants state that this error and the entire delay between the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date the claim was filed was unintentional and solely due to a single error by the undersigned. This is self-evident from a reading of the Application Data Sheet as well as from the File Wrapper documents themselves which show that Applicants made a good faith effort to claim priority, but made a simple error in designating the type of priority claimed.

This single error arose in this and the other fifty applications filed on behalf of the Assignee in this application. The error in this application, and the other applications, shown listed on Appendix A hereto, arose out of a single commonly repeated error over the course of filing these applications by the undersigned over almost two years.

It is only after the first several Office Actions were received in connection with this application, as well as in several of the other applications, that the error became apparent. To require payment of the \$1,370 fee in this application and all of the other applications in which the error arose out of the single common mistake would work a tremendous financial injustice on the Assignee in this, and the other applications. As it is, a substantial financial burden will still be imposed upon the Assignee because a separate Petition under 37 CFR §1.183 for each application will still require a \$400 petition fee.

It is again pointed out that the error in all the applications arose out of a common single mistake by the undersigned, which was not noticed until a first Office Action was issued well after the time period during which the mistake could have been corrected. The claim for priority and the relationship between the applications were also reflected in the Transmittal Letter concerning a submission under 37 CFR §371. In that Transmittal Letter the prior international application was clearly identified as well as in the Application Data Sheet originally submitted with each application. As stated, the only error was that the International Application was erroneously identified as being an application giving rise to a foreign priority claim. A copy of the published International Application was also attached at filing.

The burden of multiple \$1,370 petition fees may cause the Assignee to forfeit rights in inventions due to the huge cost burden imposed of over \$72,000. This would result in a great injustice. Even with the \$400 petition fee required under 37 CFR §1.183, there will still be a substantial financial burden imposed of over \$20,000.

It should be noted that petitions previously have been filed in three of the fifty-one applications listed in the Appendix, along with the appropriate petition fees in each of these case:

- In two of the applications, Serial No. 10/441,653 filed 05/19/2003 and Serial No. 10/771,659 filed 02/04/2004, individual petitions were both filed on 11/22/2005, each with the payment of the \$1,370 petition fee. These two petitions were filed because the applications were in the issue process. This petition also requests that such fees be refunded for the same reasons. No petition decision has yet been rendered for these two applications. But, the \$1,370 petition fee has been charged to Assignee's Deposit Account in both applications.
- In one of the applications, Serial No. 10/445,704 filed 05/27/2003, the petition has been dismissed. But, the \$1,370 petition fee also has been charged to Assignee's Deposit Account.

Thus, it is respectfully urged that, in the interest of justice, the \$1,370 petition fee that has been paid in each of the three above noted applications be refunded to the Assignee's Deposit Account No. 502786.

Finally, one may argue that the rules provide a remedy under 37 CFR 1.78 and that a Petition under 37 CFR §1.183 is not necessary or appropriate. However, this ignores the fact the large fee required under 37 CFR §1.78 is generally reflective of a penalty for an error in one

application. It is respectfully urged that 37 CFR §1.78 is not intended to exact a penalty of the magnitude described herein for a simple error repeated in multiple applications. Even with the granting of this Petition, the Applicants/Assignee still faces a tremendous cost of \$400 per application in a total of fifty-one applications. It is thus respectfully urged that justice demands the granting of this petition in this, and in each of the other of Applicants'/Assignee's applications in which a similar Petition is being filed together herewith.

The Director is thus requested to grant this Petition and each respective similar Petition filed with respect to the other similarly situated applications in the Appendix attached hereto.

It is again also affirmatively stated herein that the entire delay between the date the claim was due under 37 CFR §1.78(a)(2)(ii) and the date the claim was filed was unintentional. Further, to properly establish Applicants' claim for priority, a Supplemental Application Data Sheet is being submitted herewith and it is respectfully urged that the Director approve entry of the Supplemental Application Data Sheet, and that the claim for priority, both domestically and internationally, be granted.

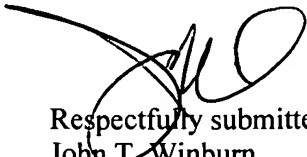
In the alternative, should the Director determine that a fee is required with respect to this petition, the Director is hereby authorized to charge Deposit Account 502786 for any deficiency in this and each of the other applications. Applicants believe, since a single error was committed, that any fee charged should be only charged once in the amount of \$400 or \$1,370, as the Director determines. In the event the Director determines that such a fee is required with respect to this petition, it is respectfully urged that the fee be deducted from the previously requested refund as detailed on Page 3 of this petition.

Should the Director have any questions or require additional submissions to support this Petition and its granting, the Director is courteously requested to contact the undersigned at the number listed below.

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Name of Attorney Signing



Respectfully submitted
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Registration No. 26,822
March 17, 2006